**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CRIMINAL APPLICATION No. 654 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SURESH @ SURA KANJIBHAI**
**Versus**
**THE STATE OF GUJARAT AND OTHERS**

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**Appearance :**
MS KRISHNA U MISHRA for the Petitioner
MR KT DAVE, ADDITIONAL PUBLIC PROSECUTOR for the Respondents

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**CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

**Date : 02/05/2006**

**ORAL JUDGMENT**

1. Rule. Mr.K.T.Dave, learned Additional Public Prosecutor waives service of rule on behalf of the respondents.

2. Present is the application filed through learned

advocate on 12.04.2006. It is prayed in the application that, “YOUR LORDSHIPS be pleased to allow this application; and be pleased to release the applicant on his due first furlough leave; by imposing any suitable terms and conditions;”

3. The matter came up for hearing before this Court on 17.04.2006. The matter was adjourned to 25.04.2006 at the request of the learned Additional Public Prosecutor to get instructions in the matter. On that day, a request was made on behalf of learned advocate for the petitioner to adjourn the matter and the matter was adjourned for today.

4. Today, Mr.K.T.Dave, learned Additional Public Prosecutor has produced a communication dated 03.02.2006 addressed to the Additional Director General of Police and Inspector General of Prisons by the Superintendent of Police, Amreli wherein it is mentioned that the present petitioner – convict was released, on his brother (Kiritbhai Kanjibhai Kabaria) being surety. The surety had assured the authorities to keep the petitioner – convict with him on his release from jail. It was also assured that there will be no breach of peace. The surety had submitted that presence of his brother (convict) will be helpful to get the mother treated who is suffering from cancer.

It is further stated in the communication that when the convict was on parole, the witnesses of Amreli City I C.R.No.109 of 2003 attacked the convict and his brother and an offence is registered being Amreli City Police Station I C.R.No.184 of 2005 for the offence punishable under Section 307 of the Indian Penal Code.

This particular fact is suppressed by the present petitioner – convict. In fact, the administrative officer of the Office of the I.G. (Prisons) by communication dated 28.02.2006 intimated to the Superintendent, Ahmedabad Central Jail that the District Superintendent of Police, Amreli has given an adverse opinion and has expressed the apprehension that if the convict is released, there are all chances of breach of peace besides, he may not report back. The District Superintendent of Police, Amreli did not recommend grant of furlough leave.

It is after this communication that the present application is filed before this Court and in this application, this material fact is not mentioned by the petitioner – convict.

5. Learned advocate appearing for the petitioner – convict submitted that the petitioner – convict is a poor person.

Poverty is not the ground which can justify the suppressing of material fact. Poverty does not entitle a person to suppress a material fact from the Court. It can also not be pleaded by the learned advocate or her client that he being a convict, did not know that this fact is required to be mentioned in the application.

6. This is a case wherein deliberately material fact is suppressed to obtain favourable order. This is a fit case wherein proceedings for contempt of Court should be drawn, but then the Court restrains itself from taking up the proceedings for contempt of Court to avoid being harsh.

However, the Office is directed to send a copy of this order to the jail authorities so that this mis-conduct of the petitioner – convict is dealt with in accordance with law.

A copy of communication dated 03.02.2006 is taken on record. The same should also be accompanied to this order while communicating to the authorities.

7. The application is rejected. Rule is discharged.

(RAVI R.TRIPATHI, J.)

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